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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. 80-1112

UNITED STATES OF AMERICA,

PETITIONER,

- vs -

HOZIE CHAMBERLIN,

RESPONDENT.

MOTION FOR LEAVE TO
PROCEED
IN FORMA PAUPERIS

Pursuant to 18 U.S.C. § 3006A(d)(6) and Rule 46 of this Court, the Respondent, Hozie Chamberlin, asks leave to file the Memorandum in Opposition to the Petition for Writ of Certiorari filed by Petitioner without prepayment of fees or costs and to proceed in forma pauperis. Respondent was represented by counsel appointed pursuant to 18 U.S.C. § 3006A in the district court and on appeal to the Ninth Circuit Court of Appeals.

Respectfully submitted,

DATED: 3 February 1981.

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RESPONDENT.

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. 80-1112

UNITED STATES OF AMERICA,

PETITIONER

- vs -

HOZIE CHAMBERLIN,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The Government contends that an officer engaged in "reasonable, good faith police work" should be permitted to detain a person for twenty to thirty minutes even in the absence of facts rising to the level of probable cause and that all evidence obtained during that investigative detention should be admissible.

Respondent was convicted upon stipulations providing, inter alia:

"(5) That Terry B. Morse, San Diego Police Officer is called as a witness for the government and being first duly sworn testifies as follows:

> 'On October 4, 1978, at approximately 12:30 p.m., Robert Franklin ran and defendant Hozie Chamberlin, who has a physical handicap quickened his pace as I approached in my police vehicle. I apprehended Hozie Chamberlin and detained him in the police car as I attempted to locate Robert Franklin. While detained in the police car, Hozie Chamberlin stated that he had just been to the Universal Furniture Store. Shortly, thereafter

> I recovered United States Treasury check #11,728,876,... from William Mitchell. The check had been found near the spot where I had earlier apprehended Hozie Chamberlin. After I recovered the check, Hozie Chamberlin denied he had been to the Universal Furniture Store earlier that day. I went to the Universal Furniture Store and interviewed the manager and two employees. I then arrested Hozie Chamberlin and transported him to the San Diego Police Department.' (emphasis supplied)
>
> "(7) That the above stipulations would not have been entered into had the defendant's motion to suppress evidence been granted, and the defendant reserves his objection to the stop, search and seizure motion for appellate purposes." [C.R. 30]

The Government informs this Court that respondent answered the question of Officer Morse and provided the "returning from paying his mother's bill at the Universal Furniture Store" prior to the placing of respondent in the police vehicle. [Petition at p.2] Officer Morse did provide that testimony at the suppression proceedings. [Tr. 43-45] However, the Government stipulated that Officer Morse would testify at the trial:

> "While detained in the police car, Hozie Chamberlin stated that he had just been to the Universal Furniture Store." [C.R. 30]

Apparently, the Government discussed the matter with Officer Morse and refreshed his memory somewhat prior to entering into the stipulation that the initial statement pointing to the Universal Furniture Store had occurred while respondent was detained in the police car. Such further discussion with Officer Morse would be warranted where Officer Morse had been unable to recall at the motion proceedings whether he had seen respondent with Robert Franklin on "many occasions", "some occasions", "not many", or "some". [Tr. 45] As to advising respondent of his rights, Officer Morse testified, "I don't know whether I advised him of his rights at all." [Tr. 35]

Petitioner, believing that this Court will carve out an exception in Michigan v. Summers, No. 79-1794, to permit law enforcement officers to detain citizens for minutes, hours, or even days under the guise of investigative detentions in which the officers might be engaged in "reasonable, good faith police work", requests that this petition be held pending disposition in Michigan v. Summers, supra.

In Davis v. Mississippi, 394 U.S. 721, 726-727 (1969), this Court rejected "investigatory detentions" not based upon probable cause, stating:

> "[T]o argue that the Fourth Amendment does not apply to the investigative state is fundamentally to misconceive the purposes of the Fourth Amendment.... Nothing is more clear than that the Fourth Amendment was meant to prevent wholesale intrusions upon the personal security of our citizenry, whether those intrusions be termed arrests or investigatory detentions." 394 U.S. at 726-727.

Respondent was placed in a caged San Diego Police vehicle and detained for twenty to thirty minutes. Officer Morse testified that from the moment of the detention to the transportation of him to the San Diego Police Department respondent was not free to depart. [Tr. 76] That Officer Morse acted in "good faith" in detaining respondent was insufficient. Henry v. United States, 361 U.S. 98, 102 (1959). The seizure of respondent was required to be supported by the long prevailing standards of probable cause. Dunaway v. New York, 442 U.S. 200, 212 (1979).

Petitioner relies upon Michigan v. Summers, supra, pending in this Court, in requesting that the instant case be held in abeyance. However, in Michigan v. Summers, the officers were in the process of executing a search warrant. Those officers may be deemed to have acted pursuant to facts providing probable cause; whereas, petitioner does not contend that Officer Morse acted upon facts rising to the level of probable cause in detaining respondent.

Petitioner contends also that Officer Morse's trip to the Universal Furniture Store with the subsequent identification of respondent was not tainted by the illegal detention. This contention disregards the stipulation upon which respondent was convicted. The Government stipulated that Officer Morse would testify that respondent made the statement about the Universal Furniture Store while detained in the police vehicle. [C.R. 30] After the check was found and turned over to Officer Morse, respondent is alleged to have denied having made the prior Universal Furniture Store statement.

It was the statements of respondent set forth in the stipulations that led Officer Morse to the Universal Furniture Store and the identification of respondent. Those statements, the product of the illegal detention, and the subsequent identification were not so attentuated as to dissipate the taint of the illegal detention. See, Wong Sun v. United States, 371 U.S. 471, 488 (1963). Consequently, there was no intervening circumstances between the illegal detention

which produced the Universal Furniture Store statements and the subsequent identification of respondent by employees of that store.

CONCLUSION

For the foregoing reasons, respondent respectfully submits that the petition for a writ of certiorari should be denied.

Respectfully submitted,

DATED: 30 January 1981.

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